UNITED
NATIONS

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General Assembly

Distr.
GENERAL

A/51/7/Add.2
15 November 1996

ORIGINAL: ENGLISH

Fifty-first session
Agenda item 116

PROGRAMME BUDGET FOR THE BIENNIUM 1996-1997

Budget of the International Seabed Authority for 1997

Third report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the note by the Secretary-General containing the budget of the International Seabed Authority for 1997 (A/C.5/51/21). During its consideration of the report, the Advisory Committee met with representatives of the Secretary-General, who provided additional information.

2. As recalled in paragraph 2 of the Secretary-General's note transmitting the budget, the General Assembly, in its resolution 48/263 of 28 July 1994, decided to fund the administrative expenses of the International Seabed Authority through the budget of the United Nations until the end of the year following the year during which the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea entered into force.

3. Furthermore, as indicated by the Advisory Committee in paragraph 6 of its previous report on the subject (A/50/7/Add.6), as long as the budget of the International Seabed Authority is to be financed by the regular budget of the United Nations, the approval of the funding must be in accordance with Article 17 of the Charter of the United Nations, that is, the budget would have to be approved by the General Assembly after review by the Advisory Committee.

4. The Advisory Committee notes that, as indicated in paragraph 4 of the budget (A/C.5/51/21, annex), the Implementing Agreement entered into force on 28 July 1996. Therefore, 1997 will be the last year in which the budget of the Authority is to be funded from the budget of the United Nations.

5. The Secretary-General of the United Nations, pending the election of the Secretary-General of the Authority, submitted to the General Assembly, at its

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fiftieth session, a draft budget covering the administrative expenses of the secretariat of the Authority and the conference-servicing costs for 1996 (A/C.5/50/28). The General Assembly subsequently approved the amount of $2,627,100, which included a provision of $1,308,200 to meet administrative expenses of the secretariat, and $1,318,900 to cover conference-servicing expenses. The latter amount was to be met from the resources appropriated under section 26E of the proposed programme budget for the biennium 1996-1997. As regards the amount for administrative expenses, the Secretary-General retained the 1994-1995 appropriation of $776,000 as a resource base for 1996-1997. Subsequently an additional appropriation of $532,200 was approved for the 1996 budget of the Seabed Authority under section 33 of the proposed programme budget for 1996-1997, as recommended by the Advisory Committee in its report of 6 December 1995 (A/50/7/Add.6).

6. The Committee notes, however, that the General Assembly, in paragraph 72 of section III of its resolution 50/214 of 23 December 1995, states the following:

> "The General Assembly,
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> "...
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> "72. Also approves the level of resources for administrative expenses of the International Seabed Authority recommended by the Advisory Committee on the understanding that expenditures beyond an amount of 776,000 dollars would, on an exceptional basis, be absorbed under section 31 of the proposed programme budget."

7. The budget of the United Nations is biennial, but the budget of the Seabed Authority is annual; clarification is therefore needed as to whether the decision cited above applies to the 1997 budget of the Seabed Authority as well as to that for 1996. In this regard, the Advisory Committee points out that at the time the General Assembly adopted resolution 50/214, the Fifth Committee was aware of the Seabed Authority budget estimate for 1996 only. Moreover, the work programme of the Seabed Authority had not yet been determined, since the Secretary-General of the Authority had not yet been appointed. At the same time, however, the Committee notes from the annex to the Secretary-General's report of 14 May 1996 (A/C.5/50/67) that projected expenditure for 1997 for the Seabed Authority was footnoted to read as follows:

> "May be absorbed as offset against section 31 project deferrals to be identified in addition to those incorporated in A/C.5/50/57 proposals (see General Assembly resolution 50/214, sect. III, para. 72)."

Subsequently, the Committee was informed by representatives of the Secretary-General that they no longer believed this could be the case.

8. The Advisory Committee points out that the Secretary-General is proposing an additional reduction of $2 million under section 31 in his report (A/C.5/50/57), to be achieved by the deferral of a number of projects. The Advisory Committee has stated in paragraph 20 of its related report (A/50/7/Add.16) that this may only result in unusually high resource requirements in the following bienniums.

9. The Secretary-General proposes, in paragraph 3 of his note (A/C.5/51/21), to consider the provision of $2,750,500 for administrative expenses of the Authority "in the context of the revised appropriation by the Assembly, after review of all relevant reports, including the first performance report." The General Assembly may wish to consider whether or not the option of using the contingency fund to meet the expenses of the Seabed Authority should be addressed.

10. The activities of the Authority during 1996 are related in large part to the establishment and internal administration of the entity. In paragraph 3 of his note (A/C.5/51/21), the Secretary-General indicates, however, that 1997 will witness the initiation of the substantive work programme of the Authority. The proposed budget for the Authority for 1997, presented in the annex to his note, amounts to $4,150,500. As indicated therein, the estimate is $1,939,500 less than the previously estimated amount of $6,090,000 referred to in the report of the Advisory Committee to the forty-eighth session (A/48/7/Add.16).

11. The Committee notes, as indicated in the breakdown contained in the appendix to the budget, that requirements for posts and common staff costs amount to $1,526,900. The proposed staffing level of 30 posts, bearing in mind the requirements of the substantive work programme for 1997, includes 15 posts in the Professional category and above (1 S-G, 2 D-1, 4 P-5, 3 P-4, 5 P-3) and 15 posts at the General Service level. This represents an increase of 10 posts over 1996. The Committee was further informed that, in accordance with the phasing-in strategy, the level is to increase to 39 posts in 1998 and to 44 posts in 1999, the first year during which the Authority will be functioning at full capacity.

12. The programme of work for 1997 of the four organizational units of the secretariat of the Authority - Office of the Secretary-General, Office of Legal Services and Implementation Affairs, Office of Resources and Environmental Monitoring and Office of Administration and Management - along with the post requirements to implement it, are contained in paragraphs 13 to 33 of the budget (A/C.5/51/21, annex).

13. The appendix to the budget also provides the breakdown of non-post resources required for the administrative expenses of the secretariat in the estimated amount of $1,223,600. The Committee notes a provision of $60,000 for the residence of the Secretary-General of the Authority under rental and maintenance of premises. The Committee was informed, upon inquiry, that the housing arrangement was provided in lieu of any other provision under staff rules. The Committee, however, further inquired with regard to the recommendations made by the Finance Committee, in its report of 14 August 1996, 1/ encouraging the Secretary-General of the Authority to consult the host country concerning the residence to see if the item could be omitted from the budget in the future and to continue to seek to obtain the best possible terms as regards office accommodation. The Advisory Committee understands that the Secretary-General of the Authority will report to the Finance Committee on the results of the above consultations.

14. In paragraph 3 of his note submitting the 1997 budget proposal of the Authority, the Secretary-General indicates that it is anticipated that the

provision of conference services, amounting to $1.4 million, can be provided from within the overall resources available under section 26E of the programme budget. The Advisory Committee further inquired from the Secretariat as to the effect on conference services of the $154 million savings mandated by the General Assembly in its resolution 50/214. The secretariat indicated that although conference services were not exempt from budgetary reductions, the schedule of meetings for 1996-1997 allowed for the provision of four weeks of conference services for the Seabed Authority during 1997.

15. The Advisory Committee recommends the approval of the proposed provision of $2,750,500 for the administrative expenses of the International Seabed Authority for the period 1 January to 31 December 1997, as reviewed by the Finance Committee, and adopted by the Assembly of the International Seabed Authority on 16 August 1996. In this connection the Committee notes that the Finance Committee made a series of recommendations in paragraph 6 of its report 1/ that were adopted by the Assembly.

Notes

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UNITED
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General Assembly

Distr.
GENERAL

A/51/7/Add.3
4 December 1996

ORIGINAL: ENGLISH

Fifty-first session
Agenda item 112

REVIEW OF THE EFFICIENCY OF THE ADMINISTRATIVE AND FINANCIAL FUNCTIONING OF THE UNITED NATIONS

Procurement reform

Fourth report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on procurement reform (A/C.5/51/9), submitted pursuant to General Assembly decision 50/479 of 11 April 1996. During its consideration of the report the Committee met with representatives of the Secretary-General who provided additional information.

2. In its decision 50/479, the General Assembly had requested the Secretary-General to submit to it at its fifty-first session a comprehensive report on the implementation of procurement reform in the United Nations Secretariat as defined in paragraph 5 of the report of the Advisory Committee. The Committee had requested that the report cover all the procurement activities of the Secretariat at its Headquarters, and all missions and operations away from Headquarters, including progress made on the measures proposed by the Secretary-General in his reports of 22 June 1995 (A/C.5/49/67) and 9 February 1996 (A/C.5/50/13/Rev.1).

3. Actions already taken or in progress with regard to implementation of reform measures are discussed in the report of the Secretary-General (A/C.5/51/9). These include the organization and structure of the Procurement and Transportation Division; training; delegation of procurement authority; use of systems contracts; updating the Supplier Roster (including the main criteria for evaluating suppliers); strengthening the Headquarters Committee on Contracts and local committees on contracts; streamlining of procedures; and development of information technology in support of procurement activities.

4. The Advisory Committee welcomes the measures outlined. As they were only introduced in July 1996, it may be too soon to evaluate the results.

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5. In paragraphs 4 and 13 of its report (A/50/7/Add.13), the Advisory Committee had recommended that the Secretary-General review the situation at Headquarters with a view to integrating procurement activities of the Secretariat and, as much as possible, coordinating with those of the United Nations Office for Project Services and other entities such as the Inter-Agency Procurement Services Office. The Committee notes from paragraph 3 of the Secretary-General's report that the outcome of the review is still awaited. The Advisory Committee strongly recommends that immediate steps be taken within a specified time-frame to complete the review and communicate the outcome to the General Assembly.

6. The Advisory Committee notes from paragraphs 4 to 6 and annexes II and III to the Secretary-General's report the new structure and organization of the Procurement and Transportation Division. The Advisory Committee was informed that no further changes are envisaged in the foreseeable future and that the structure had enough flexibility to incorporate the procurement function of the Department for Development Support and Management Services should a review reveal that such a move would be beneficial.

7. The Advisory Committee welcomes the efforts of the Division with regard to training, including on-the-job training of procurement officers as indicated in section III of the report. The Advisory Committee trusts that this practice will be a regular feature, extended over time to all staff involved in procurement activities.

8. With regard to delegation of authority, as indicated in section IV of the report, the Advisory Committee notes that, effective 15 August 1996 (annex IV to the report), the local committees on contracts have authority to consider cases ranging from $50,000 to $200,000 while the Headquarters Committee on Contracts will consider cases in amounts above $200,000.

9. The Advisory Committee notes from paragraph 11 of the report that the revised delegation of purchasing authority under the terms of financial rule 110.16 has been implemented as of October 1996; the authority to undertake procurement activities and the levels of signature for commitments are now specifically granted to individual procurement officers. In this connection, on inquiry, the representatives of the Secretary-General informed the Committee that they did not know whether other funds, programmes and organizations within the United Nations system followed this practice and that the Secretariat had not held consultations with these entities. The Advisory Committee recommends that this issue be monitored carefully and reviewed after six to eight months to evaluate improvements in the process as a result of granting of signing authority to individual procurement officers.

10. At the time of its consideration of the Secretary-General's report on the financing of the United Nations mission in Haiti (A/50/363/Add.1), the Advisory Committee had been informed of some of the benefits that could be derived from a "systems contract" arrangement: the United Nations would be able to forecast requirements for an extended period of time, be committed to only a minimum purchase, conduct a competitive bidding exercise and draw against the contract only when required. The arrangement would allow the United Nations to group all requirements for similar or identical items into one single framework, taking

advantage of the volume discount potential and setting up a mechanism for drawing requirements without repeating the bidding exercise for each requisition. In this connection, the Advisory Committee notes and supports the Secretary-General's statement in paragraph 12 of his report that "such contracts, while relieving procurement officers from routine and repeated bidding exercises, demand far greater vigilance in monitoring vendor performance and carrying out effective contract administration".

11. The Advisory Committee notes from paragraph 18 of the Secretary-General's report that the existing supplier roster of the Division, which previously comprised 4,000 firms, has been vetted and updated. The Committee was informed that as at the end of October 1996 the total number of registered suppliers was 1,623. The Committee notes the additional information with respect to the supplier roster, including the main criteria for evaluating suppliers (paras. 18-23). The Advisory Committee requests the Secretary-General to refine the criteria for evaluating suppliers so as to broaden the base.

12. The Advisory Committee recalls that in the report of the Office of Internal Oversight Services (A/50/945, annex), the shortcomings in procurement controls and procedures in the Department for Development Support and Management Services were highlighted. Among the deficiencies indicated was the use of brokers in place of vendors/suppliers. According to the Office, purchases through such agents could possibly involve serious risks and higher costs to the Organization. On inquiry, the Advisory Committee was informed that the Administration believes that there is some merit in utilizing agents/brokers in certain cases where goods and services are not always readily available or have different and varied specifications, provided that the broker's credentials have been thoroughly checked and involve no risk to the Organization. The Advisory Committee is of the opinion that continued efforts to revise and expand the vendor database should obviate the necessity to use such brokers except under very exceptional circumstances, the reasons for which should be recorded in each case.

13. As indicated in paragraph 9 of the Secretary-General's report, owing to budgetary constraints, staff are not able to travel away from Headquarters and therefore arrangements are made whereby "groups of company and industry representatives are briefed on how to do business with the United Nations". Such arrangements are made in New York City by various permanent and observer missions to the United Nations and by consulates and trade commissions in New York City. While the Advisory Committee sees the merit in these arrangements, it nevertheless believes that adequate resources should be made available for travel by staff to other locations for the purposes of expanding the supplier base to reflect equitable geographical distribution consistent with maximum effectiveness.

14. The Advisory Committee notes the comments of the Board of Auditors in paragraphs 93 and 94 of its report[1] with regard to the geographical base of suppliers. As indicated by the Board, of the 1,237 re-registered vendors at the time, 1,061 (86 per cent) were based in Western Europe and North America. Forty-eight per cent of the suppliers belonged to one Member State and a further 13 per cent belonged to a second Member State.

15. The Advisory Committee notes the statement in paragraph 25 of the Secretary-General's report regarding use of suppliers recommended by requisitioners. In this connection, the Advisory Committee reiterates its recommendation made in paragraph 22 of its report (A/50/7/Add.13) that this practice undermines the principle of segregation of responsibilities between requesting and procurement units; the practice should be discontinued. The Advisory Committee believes that if the supplier roster were a complete and comprehensive one, there would be no need for requisitioners to recommend suppliers.

16. The Advisory Committee welcomes section VIII of the Secretary-General's report outlining changes in the Headquarters Committee on Contracts. The Advisory Committee was provided with additional information on policy guidelines for categories of cases to be submitted to the Headquarters Committee, its composition, general functions and meetings, as well as the ex post facto presentations to it (see the annex to the present report). While the Advisory Committee notes these guidelines, it awaits the Secretary-General's proposals for amendments, if any, pursuant to General Assembly resolution 49/216 C, to the Financial Regulations and Rules and to the Staff Regulations and Rules required to address any conflicts of interest.

17. The Advisory Committee notes from paragraph 33 of the Secretary-General's report that, pursuant to paragraph 3 (b) of General Assembly resolution 49/216 C, further efforts have been made to strengthen the role of the Headquarters Committee on Contracts and to provide greater transparency in its operations in the granting of exceptions to competitive bidding under financial rule 110.19, particularly where exigency is cited as the reason for requesting such exceptions. Furthermore, efforts are being made to ensure that "exigency" is not cited as a means to conceal delays in the procurement process and the presentations to the Headquarters Committee. The Advisory Committee maintains that a sharper definition of "exigency" needs to be provided, as called for in General Assembly resolution 49/216 C.

18. The Advisory Committee recalls the comments of the Board of Auditors in its report[2] with regard to ex post facto cases. In this connection the Advisory Committee notes the information provided in paragraphs 36 to 41 of the Secretary-General's report and the additional information provided in the annex to the present report, indicating measures to limit recourse to ex post facto submissions to the Headquarters Committee on Contracts. The Advisory Committee understands that some cases were presented to the Headquarters Committee as late as two or three years after the fact for ex post facto approval. The Advisory Committee believes that the local contract committees should be given the authority where necessary to approve cases, while the role of the Headquarters Committee on Contracts in such instances should be to evaluate the appropriateness of that action.

19. The Advisory Committee notes the information in paragraphs 46 to 49 of the Secretary-General's report regarding advanced procurement planning and coordination in procurement. However, it is not clear from the document how procurement planning has been enhanced, although coordination has improved as previously called for by the Advisory Committee. With regard to inventory of assets (para. 53), the Advisory Committee recalls its comments in paragraph 20

of its report (A/50/7/Add.13) and notes the information provided in the Secretary-General's report.

20. The Advisory Committee notes the information on staff resources and workload in paragraphs 54 and 55 of the Secretary-General's report. On inquiry, the Advisory Committee was informed that, of the 32 posts at the Professional level, 6 posts, including 3 on the regular budget, remained vacant at the time of reporting. As indicated in paragraph 55 of the report, there are four officers on secondment from their Governments at no cost to the Organization. Although these officers do not have procurement signing authority, the Advisory Committee was informed that they were engaged in such areas as purchasing and operational activities. The Advisory Committee points out that there is a serious potential conflict of interest in such a situation, especially since these officers are not staff members of the United Nations and therefore are not answerable under the regulations and rules of the Organization. The Advisory Committee's detailed observations and comments with regard to gratis personnel provided by Governments and other entities will be made in the context of its examination of the Secretary-General's report on the subject (A/51/688).

21. The Advisory Committee notes with concern the limitations upon the Procurement and Transportation Division owing to overall budgetary constraints. In view of the importance of this function and the impact it has on the expenditure of the Organization, the Advisory Committee recommends that the vacant posts relating to procurement be filled as soon as possible.

22. As indicated in its report on financial reports and audited financial statement (A/51/533), the Advisory Committee believes that procurement reform should be given top priority in the United Nations and its funds and programmes. In the opinion of the Advisory Committee, the present report of the Secretary-General constitutes an incremental step in that direction. Bearing this in mind, the Advisory Committee requests that in its next report the Board of Auditors should focus on evaluating the adequacy of the measures taken by the Secretariat in line with the Board's own recommendations and those of the Advisory Committee and the General Assembly.

Notes

[1] Official Records of the General Assembly, Fifty-first Session, Supplement No. 5 (A/51/5), vol. I.

[2] Ibid., paras. 96-97; and ibid., vol. II, paras. 119 and 122.

ANNEX

PROCUREMENT AND TRANSPORTATION DIVISION POLICY GUIDELINES

HEADQUARTERS COMMITTEE ON CONTRACTS FINANCIAL RULE 110.17

CATEGORIES OF CASES TO BE SUBMITTED TO THE HEADQUARTERS COMMITTEE ON CONTRACTS

1. When any of the following category of cases apply to a purchase order or procurement contract (a "contract"), the advice of the Headquarters Committee on Contracts (hereafter referred to as the Committee) shall be obtained prior to any contractual commitment being made:

a. Any contract to be entered into with a single contractor in respect of a single requisition or a series of related requisitions in a calendar year totalling $200,000 or more, or as such amount may be amended from time to time by the Under-Secretary-General for Administration and Management (USG/DAM);

b. Any amendment, modification or renewal of a contract previously reviewed by the Committee, where the contract amendment or a series of amendments in the aggregate either increases the amount by more than 20 percent or $200,000, whichever is less;

c. Any amendment or modification of a contract previously reviewed by the Committee, where in the judgement of the procurement officer the significance of the contract amendment in relationship to the criteria on which the original award was made would significantly affect the procurement process;

d. Any amendment, modification or renewal of a contract not previously submitted to the Committee, where the amount in the aggregate now exceeds $200,000;

e. Any contract relating to the standardization of supplies or equipment which renders competition impracticable; and

f. Any other matter relating to a contract referred to the Committee by the USG/DAM, the Assistant Secretary-General for Conference and Support Services (ASG/OCSS) or such other officials duly authorized under Financial Rule 110.16.

2. When any of the following category of cases apply to a contract which involves income to the Organization, the advice of the Committee shall be obtained prior to any contractual commitment being made:

a. Any contract or series of related contracts which involve income to the Organization of $40,000 or more, and any contract relating to the activities where the estimated annual income when aggregated with the estimated annual income from any other contract already made with the same purchaser in the same year amounts to $40,000 or more; provided, however, income resulting from the recommendations of Property Survey Boards shall not be included;

b. Any amendment, modification or renewal of a contract which involves income to the Organization previously reviewed by the Committee, where any contract amendment or a series of amendments in the aggregate either increases the amount by more than 20 percent or $40,000, whichever is less;

c. Any amendment or modification of a contract which involves income to the Organization previously reviewed by the Committee, where in the judgement of the procurement officer the significance of the contract amendment in relationship to the criteria on which the original award was made would significantly affect the sale;

d. Any amendment, modification or renewal of a contract which involves income to the Organization not previously submitted to the Committee, where the amount in the aggregate now exceeds $40,000; and

e. Any other matter relating to a contract which involves income to the Organization referred to the Committee by the USG/DAM, the ASG/OCSS or such other officials duly authorized under Financial Rule 110.16.

COMPOSITION OF THE COMMITTEE

3. The Committee shall be headed by a Chairman who shall be appointed by the ASG/OCSS, who may consult with the Controller and the Legal Counsel in appropriate circumstances. With respect to the matters set forth in paragraphs 1 and 2 above, the Committee shall be responsible for rendering advice to the ASG/OCSS or such other officials duly authorized under Financial Rule 110.16.

4. In addition to the Chairman, the Committee shall be comprised of a staff member from each of the following departments/offices:

(a) Office of Conference and Support Services (OCSS/DAM);
(b) Office of Programme Planning, Budget and Accounts (OPPBA/DAM);
(c) Office of Legal Affairs (OLA); and
(d) Department for Development Support and Management Services (DDSMS).

Each of the foregoing staff members shall serve for a term not to exceed three (3) years.

5. The head of each department/office set forth in paragraph 4 above shall designate a staff member as well as one or more alternates from his or her department/office to serve on the Committee. The individuals selected must have commercial, financial or legal experience or qualifications in procurement.

6. Any department/office initiating a procurement action required to be reviewed by the Committee may have a representative in attendance in a non-voting capacity when its procurement action is under discussion. The representative shall not take part in the meeting unless requested to do so by the Chairman of the Committee.

GENERAL FUNCTIONS OF THE COMMITTEE

7. The Committee renders advice to the ASG/OCSS or such other officials duly authorized under Financial Rule 110.16. The purpose of the Committee is to examine and provide advice as to whether the proposed contract, including a contract which involves income to the Organization, is in accordance with the United Nations Financial Regulations and Rules, procedures, administrative issuances and instructions and that its recommendation has been based on fairness, integrity and transparency. It shall also examine and provide advice regarding the financial implications of any such proposed contract, that it is in the best interests of the United Nations and is practical to administer. In addition, the Committee shall promptly notify the Purchase and Transportation Division (PTD) of any cases that have been rejected by the Committee, specifying in writing full and comprehensive reasons for the rejection and any remedial action it believes should be taken. The Committee shall likewise notify the Field Administration and Logistics Division, Department of Peace-keeping Operations (FALD/DPKO) and DDSMS with respect to the cases submitted by them pursuant to paragraph 12 below.

Chairman of the Committee

8. The Chairman of the Committee is responsible for the following:

a. Issuing the agenda for Committee meetings;

b. Designating from among the members or alternates of the Committee an individual to serve as Acting Chairman whenever the Chairman is on leave, unavailable or otherwise unable to carry out his or her duties;

c. Reviewing the presentations prior to Committee meetings and, when necessary, requesting clarifications and/or additional information from the Head of PTD for submission to the Committee;

d. Issuing and distributing to the ASG/OCSS the approved minutes of the meeting, signed by the Chairman and Secretary of the Committee, as soon as practicable and generally within 72 hours after the conclusion of the Committee meeting;

e. Coordinating the activities of the Committee; and

f. Providing monthly statistics on the workload and activity of the Committee to the ASG/OCSS.

Secretary of the Committee

9. The ASG/OCSS shall appoint a Secretary to the Committee who shall have experience or qualifications in procurement. The Secretary shall be responsible for preparing the minutes and any correspondence. The Secretary shall also be responsible for finalizing the necessary arrangements for Committee meetings and shall endeavour to distribute all documentation relevant to a presentation to Committee members on the same day the presentation is received from PTD and at least two (2) working days prior to the Committee's meeting. The Secretary shall not be a member of the Committee and shall be non-voting.

10. The Secretary of the Committee shall maintain a permanent record of all Committee minutes. The approved minutes shall be signed by the Secretary and the Chairman and promptly forwarded to the ASG/OCSS, together with the recommendations of the Committee, for his or her consideration.

PTD's Role With Respect to the Committee

11. PTD is responsible for the following:

a. Ensuring, in conjunction with the relevant requisitioning office, that the presentation submitted to the Committee is complete, including a written justification for the proposed award and a brief description of the purpose or need for the goods and services proposed to be purchased;

b. Prior to the meeting, providing clarification and/or additional information in connection with a presentation, when requested to do so by the Chairman for submission to the Committee;

c. At or subsequent to the meeting, providing clarification and/or additional information in connection with a presentation when requested by the Committee; and

d. Ensuring that procurement is undertaken in accordance with the United Nations Financial Regulations and Rules, established procurement practices and procedures, and administrative issuances and instructions and that it is in accordance with economy, delivery schedules and effectiveness. PTD shall also ensure fairness, integrity and transparency through competition and other permissible modes of awards in connection with procurement action.

PRESENTATIONS TO THE COMMITTEE

12. The Head of PTD or, in his absence, a duly designated representative, shall sign each presentation and shall submit it to the Committee, together with Annexes A and B attached hereto, a minimum of two (2) working days prior to the Committee meeting. Notwithstanding the foregoing, presentations may be submitted directly to the Committee by the Director, FALD/DPKO, with respect to Letters of Assist applicable to field missions, and by the Chief of Contracts and Procurement Service, DDSMS, with respect to its own procurement. These Policy Guidelines and the HCC Procedures shall be fully applicable to all such presentations.

13. Presentations not submitted to the Committee a minimum of two (2) working days prior to the Committee's meeting may, with the approval of the Chairman granted in accordance with guidelines established from time to time by the ASG/OCSS, be presented by PTD to the meeting as so-called "Walk-In" or "Telephonic" presentations. All of the terms of reference and responsibilities set forth herein apply equally to such presentations as to those which have been

included timely on the Committee agenda. The Head of PTD must ensure that the need for a "Walk-In" or "Telephonic" presentation is fully justified by the relevant requisitioning office and supported by PTD. "Walk-Ins" and "Telephonic" presentations should be the exception.

MEETINGS OF THE COMMITTEE

14. The Committee shall meet at such times and frequency as may be decided by the Chairman. In this regard, the Chairman, in determining the frequency of such meetings, shall ensure that the Committee is not causing any unnecessary delay in the procurement process. The minimum frequency of such meetings shall be once a week, unless there are no presentations or other matters for consideration by the Committee.

15. At meetings of the Committee, the Chairman shall introduce all agenda items for consideration and decision by the Committee.

16. One (1) fully approved copy of the Committee's minutes shall be distributed as soon as practicable and generally within 72 hours after the conclusion of the meeting, as follows:

a. ASG/OCSS;

b. Members of the Committee;

c. Head of PTD; and

d. The relevant requisitioning department/office.

17. Generally, the Committee shall meet in open session. However, when deemed necessary by the Committee, it may meet in closed (executive) session, which shall be limited only to its members and the Secretary of the Committee.

18. Ex post facto cases must be rare exceptions and, when they arise, full justification must be provided, in accordance with Annex C hereto, as to why timely presentation was not practicable. Submission of ex post facto cases to the Committee and subsequent approval thereof does not imply that the Committee or the ASG/OCSS approves or accepts responsibility for the actions of the officer or officers who committed the United Nations contractually prior to obtaining all necessary approvals. The Committee may take note of such cases and, as necessary or appropriate, request clarifications and provide comments on the propriety of the action already taken.

19. Each Local Committee on Contracts (LCC) shall operate within the same guidelines set forth herein for Headquarters, subject to the procurement thresholds applicable to such LCC. Presentations to the Committee should be prepared fully and reviewed by the relevant LCC. It shall then render its advice to the applicable official who, if he or she approves same, shall submit the presentation to the Head of PTD for review and either (i) clarification or return to the LCC for further reconsideration and rewriting or (ii) submission directly to the Committee, as the case may be.

1 November 1996

ANNEX C* [1]

EX POST FACTO PRESENTATIONS

1. Due to the serious financial implications of the increased and unprecedented number of ex post facto presentations by Field Missions, Regional Economic Commissions and International Criminal Tribunals to their respective Local Committees on Contracts (LCC), and, when required, to the Headquarters Committee on Contracts (the Committee), and in order to ameliorate the adverse consequences of this improper practice, the following should be implemented immediately:

(a) Appropriate officials should be informed that they will be held personally accountable for authorizing any ex post facto case which cannot be properly justified to, and an exception granted by, the Assistant Secretary-General for Conference and Support Services on the following conditions: (1) as either seriously jeopardizing the operational capability of the Field Mission, Regional Economic Commission or International Criminal Tribunal or endangering the lives of UN or other personnel and (2) that the matter was beyond the reasonable control of the Field Mission, Regional Economic Commission or International Criminal Tribunal.[2] Detailed facts substantiating these conditions must be provided and any presentation that fails to comply with or attempts to circumvent them will not be accepted.

(b) Field Missions, Regional Economic Commissions and International Criminal Tribunals must also submit with their presentation, for approval by the Assistant Secretary-General for Conference and Support Services, the following:

(1) Written authorization from the CAO or COA/CPO or his /her designee with respect to all ex post facto cases, whether they are required to be submitted to the LCC and/or the Committee, confirming the necessity of the procurement action without the prior approval of all appropriate authorities having been duly obtained and stating the detailed reasons for such decision;

(2) Copies of all documents pertaining to the specific procurement,

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* Annex C to financial rule 110.17 (above).

[1] This Annex C is a composite of, and has been adapted from, Mr. Sevan's memoranda to Lt.Gen. Eisele dated 11 April 1996 and 11 October 1996, and his memorandum to Mr. Robertson dated 25 July 1996, all regarding ex post facto presentations to LCCs and/or the Committee. The provisions of Annex C are applicable to Field Missions, Regional Economic Commissions and International Criminal Tribunals.

[2] Claims that Field Missions, Regional Economic Commissions or International Criminal Tribunals had more important things to do or were understaffed -- to indicate two of the more common excuses given -- will not be accepted. In addition, presentations which are more than a year late will be strictly scrutinized.

including, among other things: the requisition; the list of invitees; the ITB, RFP or RFQ; all of the bids, proposals or quotations received; the comparative statement and evaluation documents; the written contract/PO/or other agreement, if applicable; and the LCC presentation, together with the relevant minutes attached; and

(3) As to Field Missions only, FALD's detailed reasons supporting the decision of the Field Mission.

2. There are two types of cases which commonly come before the LCC and/or the Committee which constitute violations to the United Nations Financial Rules, namely, (a) fully ex post facto cases and (b) partially ex post facto cases. For purposes of these Guidelines, the two terms shall have the following meanings:

(a) Fully ex post facto is used to define a procurement action in which goods and services have already been fully delivered or performed prior to obtaining the advice of the LCC and/or the Committee and/or the approval of all other appropriate authorities; and

(b) Partially ex post facto is used to define a procurement action in which goods and services have been delivered or performed in part prior to obtaining the advice of the Committee and/or the approval of all other appropriate authorities.[3]

For purposes of such definitions and these Guidelines generally, a "procurement action" may, but does not necessarily, include a written contract, purchase order or other agreement.

3. Financial Rule 110.17, as amended from time to time by various Under-Secretaries-General for Administration and Management, governs the submission of presentations to the LCC and/or the Committee, as the case may be:

(a) With respect to procurement at Headquarters as well as locally which is required to be reviewed and approved by the Procurement and Transportation Division (PTD) prior to submission to the Committee: any such proposed procurement action in excess of $200,000 (or the specifically delegated monetary procurement limit, if it is less) must first be submitted to

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[3] As provided in Financial Rule 110.19, "exigency" is used to define a procurement action which, because of some bona fide emergency, "does not permit the delay attendant upon the issue of invitations to bid or the calling for proposals." This exception is very specific and limited as to its applicability. It is not intended to bypass the appropriate approval authorities and should not be utilized in connection with the extension or renewal of contracts.

the Committee for its advice to, and, if satisfactory, approval by, the ASG/OCSS, before an actual commitment can be effected; and

(b) With respect to procurement by Field Missions, Regional Economic Commissions and International Criminal Tribunals in excess of $50,000 but less than $200,000 (or the specifically delegated monetary procurement limit, if it is less), any such procurement action must first be submitted to the applicable LCC for advice to, and, if satisfactory, approval by, the CAO, COA or other applicable head of office. Then, in addition to compliance with the above procedures, any local procurement action which is in excess of $200,000 (or the specifically delegated monetary procurement limit, if it is less) must be submitted to PTD for its review and clearance, submission to the Committee and, thereafter, advice to, and, if satisfactory, approval by, the ASG/OCSS, before an actual commitment can be effected.

4. However, due to the nature of the operational environment locally, particularly during the commencement phase, the CAOs or COAs/CPOs sometimes take a decision to proceed with a procurement action prior to obtaining the advice of the LCC and/or the Committee or both and/or the approval of all other appropriate authorities. Although ex post facto cases clearly contradict the letter of the Financial Rules, there is a general consensus that they may be tolerated under exceptional circumstances, provided all other UN procurement practices and procedures are followed (see, for example, paragraphs 1(a) and (b) above). However, it deserves emphasis that ex post facto cases should be utilized only in justifiable and exceptional circumstances set forth above. As a consequence of the increased willingness on the part of the CAOs or COAs/CPOs to take procurement actions prior to obtaining all of the approvals required by the Financial Rules, PTD frequently finds itself unaware of procurement activities which have already taken place until the cases are ultimately submitted to the Committee, often months, and occasionally years, after the fact.

5. At such stage, PTD cannot positively affect the procurement action. Moreover, under these circumstances, the Committee also has little control and can do no more than take note of these presentations for information purposes only; however, it cannot and does not render advice with respect to them. Ironically, such notation by the Committee is generally treated as a form of retroactive authorization of the commitment in question. As stated above, this is erroneous, a perversion of the Committee's role and has the potential for serious financial consequences for the Organization. In short, the system of financial checks and balances for such procurement is being undermined.

6. All concerned should be advised of their respective responsibilities and personal accountability for these matters.